2191.

SUPREME COURT OF THE UNITED STATES.

No. 64.

THE PROPRIETORS OF THE BRIDGES OVER THE RIVERS PASSAIC AND HACKENSACK, PLAINTIFFS IN ERROR,

vs.

THE STATE OF NEW JERSEY.

IN ERROR TO THE SUPREME COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

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Gideon, printer.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Chancellor of the State of New Jersey, the justices of the supreme court, and the [SEAL.] associate justices in the court of errors and appeals in the last resort, in all causes of law and equity for the State of New Jersey, greeting:

Because in the record and proceedings, and also in the rendition of the judgment, in a plea which is in the said court of errors and appeals before you, between the Proprietors of the bridges over the rivers Passaic and Hackensack, plaintiffs in error, and the State of New Jersey, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are commanded that, if judgment be therein given, that then, under your seal, distinctly and openly, you send the said record and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid be[ing] inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, at the Capitol of the city of Washington, the last Monday in February, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-second.

EDWD. N. DICKERSON,
Clerk cir. court U. S., New Jersey.
A. GIFFORD,
Attorney for plaintiff in error.

The answer of the judges of the court of errors and appeals of the State of New Jersey within named.

The record and proceedings whereof mention is made within, with all things touching and concerning the same, we do certify to the Supreme Court of the United States, in a certain schedule to this writ annexed, as within commanded.

O. S. HALSTEAD, [SEAL.]
President of said court.

THE PROPRIETORS OF BRIDGES OVER THE RIVERS PASSAIC AND HACKENSACK
vs.
THE STATE OF NEW JERSEY.

STATE OF NEW JERSEY.

I, Thomas S. Allison, secretary of State of the State of New Jersey, and ex officio clerk of the court of errors and appeals, [SEAL.] do hereby certify, that a copy of the writ of error to the Supreme Court of the United States, and the bond of indemnity for costs in the above entitled cause, have been filed in my office, in conformity with the statute in such case made and provided.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Trenton, this third day of December, eighteen hundred and fifty-one.

THOS. S. ALLISON, *Clerk.*

[L. S.] The State of New Jersey, to the justices of our supreme court of judicature of our said State, greeting:

Because, in the record and proceedings, and also in the giving of judgment in a plaint which was in our court, before you, between the State of New Jersey and the Proprietors of bridges over the rivers Passaic and Hackensack, on certiorari, to bring before the said court, from before a justice of the peace of Hudson county, a certain list of delinquents in case of taxation, manifest error (as is said) hath intervened, to the great detriment of the said the Proprietors of the bridges over the rivers Passaic and Hackensack, as by their complaint we are informed; we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment thereupon be given, then, without delay, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our court of errors and appeals, in the last resort in all cases of law, as heretofore, to be holden at Trenton, on the third Tuesday of July next, and this writ; that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to law ought to be done.

Witness Oliver S. Halsted, chancellor of our said State, at Trenton, the thirtieth day of June, in the year eighteen hundred and forty-eight.

SAM'L R. GUMMERE, *Clerk.*
A. GIFFORD, *Attorney.*

NEW JERSEY, *ss.*

[L. S.] The State of New Jersey to Isaac J. Vanwinkle, one of the justices of the peace in and for the county of Hudson:

We, being willing, for certain reasons, to be certified of a certain list of names of delinquents for taxes for the year eighteen hundred

and forty-six, with the sums affixed to each, and due from them respectively, as thereto annexed, returned to you by the township collector of Harrison township, in your county, and of the proceedings had thereon by you, and all things touching and concerning the same, do command you that, under your hand and seal, distinctly and openly, you certify and send to our justices of our supreme court, to be held at Trenton, on the nineteenth day of January instant, the said list of names of delinquents, with the sums as aforesaid annexed, and proceedings above mentioned, as freely and entirely before you they remain, by whatever names the parties may be called therein, together with this writ, that we may further cause to be done thereon what of right and according to law shall be fit and requisite to be done.

Witness Henry W. Green, esquire, chief justice of our said supreme court, at Trenton, the first Tuesday of January, in the year of our Lord one thousand eight hundred and forty-seven.

I. WILSON, *Clerk*,
A. GIFFORD, *Att'y*.

The execution of this writ will appear by the return annexed thereto. January 16, 1847.

ISAAC J. VANWINKLE,
Justice of the peace.

HUDSON COUNTY, *ss.*

Be it remembered, that, on the twenty-first day of December, A. D. 1846, John V. S. Vanwinkle, collector of the township of Harrison, delivered the following list of delinquents to the subscriber, one of the justices of the peace of said county; on his oath saith, that the moneys in the said list mentioned have been duly demanded, or due notice given thereof, or left at their place of residence of each delinquent who could be found or who resided in the township of Harrison; whereupon I issued a tax warrant in the above case to John V. S. Vanwinkle, constable, the twenty-fourth day of December, A. D. 1846.

ISAAC J. VANWINKLE,
Justice of the peace.

Newark and Hackensack toll bridge company.

	State & co. tax.	Dog.	Road tax.
At Newark, half - - - - - -	$20 00	—	6 67
Newark and Hackensack toll bridge company, at Hackensack river, half - -	20 00	—	6 67
Archibald Thompson - - - - -	30 84	50	10 28
James R. Dey - - - - - - -	29 05	—	9 68
John Fuligan - - - - - - -	28 71	50	9 57
Isaac J. Vanwinkle, and others - - -	15 25	—	5 08

2193.

NEW JERSEY SUPREME COURT.

THE STATE
vs.
THE PROPRIETORS of the bridges over the rivers Passaic and Hackensack. } On certiorari.

Examination of witnesses taken before me, John J. Plume, a commissioner for taking bail and affidavits in the supreme court of the State of New Jersey, by virtue of a rule of the said supreme court of the term of April, eighteen hundred and forty-seven, at my office, No. 60, Washington street, in the city of Newark, on Friday, the fourteenth day of May, eighteen hundred and forty-seven, in the presence of William Pennington, esq., on the part of plaintiffs, and Archer Gifford, esq., on the part of defendants, agreeably to notice, and adjourned to the office of A. Gifford, esquire :

Cornelius V. V. Kingsland, being duly sworn on the holy evangelists, doth depose and say: That he is thirty-seven years of age ; that he was assessor of the township of Harrison, in the county of Hudson, in the year eighteen hundred and forty-six, and still is the assessor of said township; that the taxes on the eastern abutment of the bridge over the Passaic river, and the western abutment of the bridge over the Hackensack river was twenty dollars each, (exclusive of the road tax,) making forty dollars ; the road tax being six dollars sixty-seven cents each, making thirteen dollars thirty-four cents; the State tax of the township amounts to one hundred eighty-four dollars thirty-two cents; the county tax eight hundred forty-four dollars and twelve cents, and the poor tax two hundred and fifty dollars, which, together, makes the sum of twelve hundred seventy-eight dollars and forty-four cents; that the assessor's and collector's fees, and allowance for bad debts, amount to one hundred fifty-six dollars and sixty-four cents, and that the road tax amounts to four hundred ninety-one dollars and seventy-one cents. This deponent further says, that he never assessed the road between the two bridges, but merely the bridges; the road between the bridges is worked by the bridge company; the amount of the State, county, and poor tax not being specified separately on the assessor's books, the proportion must be calculated by the several amounts, in proportion to the amount assessed on the bridges. This deponent further saith, that it has not been customary in that township to separate the taxes, but to enter the State, county, and poor tax in gross, as this deponent has done, since he has been the assessor; the bridges have been taxed for twenty-five years last past, and the tax paid to me for three years during that time as collector; the toll gatherer for the Newark bridge twice came to my house, and paid, which I recollect, and the toll gatherer of the Hackensack bridge paid me one at the bridge , when I was collector, was about nine or ten years since, for the first time ; the taxes have always been paid, to the best of my recollection, with the exception of the last two years ; deponent cannot speak positively as to one or two years during that time.

COR'S V. V. KINGSLAND.

Sworn and subscribed before me the day and year first above written.

J. J. PLUME, *Commissioner.*

Adjourned by consent of parties to Monday, the twenty-first day of June, one thousand eight hundred and forty-seven, to meet at the office of Archer Gifford, esq., at 9 o'clock in the forenoon.

June 21st, 1847, the parties met agreeably to adjournment at the office of Archer Gifford, esq., No. 169, Broad street. Present, William Pennington, esq., on the part of the State, and Archer Gifford, esq., on the part of the defendants, and adjourned to Monday, the 28th June.

Tuesday, 29th June, 1847; parties met at the office of William Pennington, esq., by agreement. Present, William Pennington, esq., on the part of the State, and Archer Gifford, esq., on the part of the defendants.

Thomas Young, of the city of Newark, being duly sworn, on his oath saith, that he is the bridge-tender and collector of tolls at the Passaic bridge, and has been for nine years last past; the road has been worked between the Passaic bridge and the Hackensack bridge by the Proprietors of the bridges over the rivers Passaic and Hackensack for the whole of that time, and for many years previous; that the father of this deponent went on the bridge as tender and collector in the year eighteen hundred and twenty-four, and this deponent has been there ever since, during all of which time the said road has been worked by the bridge company ; I am now thirty-one years of age ; I do not recollect of the township of Harrison ever working the road or participating in the working thereof; that the whole of the road aforesaid is in the township of Harrison; the tender of the bridge (deponent) has usually been called on by the collectors of taxes for the taxes of the bridge company; in the year eighteen hundred and forty-six was the last time he was called on for taxes; do not recollect his demanding pay of me; deponent recollects remarking to him that he did not think the tax would be paid ; that he must call on Mr. Gifford, the counsel of the company ; he knows the fact that the company have objected to the payment of the tax ; so far as the road tax he knows they have objected to the payment; and as to the other tax, he has heard and believed they objected to the payment; I have always, when the tax was presented to me, objected on the part of the company to the payment of the same.

Cross examined by William Pennington, esq.

The taxes have been paid up to the year eighteen hundred and forty-six, as this deponent believes ; that he has paid several years' taxes himself, and paid it on his own authority in the first instance, and it was ratified by the company; there are two county roads in the township of Harrison that lead on to the road worked by the bridge company, and over which the people are continually travelling to come on the road worked by said company; the company has never, to my knowledge, worked

the roads leading from the bridge road; these roads were worked by the township of Harrison; the abutments of the bridges over the Passaic and Hackensack rivers on the one side are in the township of Harrison; there is also a dwelling for the tenders of each bridge on the Harrison township side, and in one of which the deponent, with his family, resides; has never paid any distinct tax for the house he resides in separate from the bridge tax; it is all included in one; the company have never worked any road except the one between the two bridges.

Direct examination resumed by A. Gifford, esq.

When he speaks of the taxes all being included in one, he means that he supposes it to be the case; the house spoken of is at the end of the bridge on spiles; the water flows under it; that is not the case with the one at the Hackensack bridge; when I speak of the company ratifying the tax, he does not know that any thing was said; but when he took in the receipt for the same, it was allowed him.

THOMAS YOUNG.

Sworn and subscribed before me the day and year first above written.

J. J. PLUME, *Commissioner.*

Supreme court, New Jersey, on certiorari.

THE STATE
vs.
THE PROPRIETORS OF THE BRIDGES OVER THE RIVERS PASSAIC AND HACKENSACK.

John J. Plume, of the city of Newark, in the county of Essex, and State of New Jersey, being duly sworn, deposeth and saith, that I am acquainted with the company and their property. One of the bridges is over the Passaic river, the other over the Hackensack river, on the main road between the city of Newark and Jersey City. I was a director and superintendent of the bridges for a number of years. I was also superintendent, and had charge of the road at the time of the macadamizing of the road between the bridges in the township of Harrison. The company has worked the whole road between the two bridges. The company has always worked the road since I have had any knowledge of it; they cut down the hill some years ago while I was a director. The company refused to pay taxes, and brought a certiorari. The tax was given up for two years, being the last two years I was a director of that company. We resisted the taxes levied in the township of New Barbadoes, now Harrison township; we resisted all taxes imposed in said township.

Cross examined.

The company, I believe, has generally paid the taxes.

J. J. PLUME.

Subscribed and sworn before me, this 21st June, 1847.

S. S. MORRIS,
Commissioner in supreme court.

New Jersey supreme court, on certiorari.

THE STATE
vs.
THE PROPRIETORS OF THE BRIDGES OVER THE RIVERS PASSAIC AND HACKENSACK.

To Isaac J. Vanwinkle, justice of Harrison township, Hudson county.

Reasons.

1. Because the amount of tax, if any, should have been imposed or assessed upon the said Bridge company, was greater than by law was rated, or should have been imposed or assessed upon the said Bridge company.

2. Because the township collector of the township of Harrison did not make demand of the tax, and give notice of the meeting of commissioners of appeal, as by the statute concerning taxes should have been done.

3. Because, by the constitution of the said company, and by and under the several acts of the legislature of this State respecting the said company, and which were severally passed prior to the act under which the said taxes were authorized, such taxes should not have been assessed or imposed on the said company, as so appear by the return made to the certiorari by the said justice.

4. That the ass[ess]ment and levy, and all other the proceedings relating to the said taxes, and the assessment and imposition thereof, are contrary to law.

A. GIFFORD,
Attorney of defendant.

Supreme court, New Jersey, April term, 1848, on certiorari.

THE PROPRIETORS OF THE BRIDGES OVER THE PASSAIC AND HACKENSACK RIVERS
ads.
THE STATE.

To Isaac J. Van Winkle, esq., justice, &c., of Hudson county.

This cause having been duly argued by the counsel for both parties at the last term, and the court having taken time to advise thereon, and having inspected the record and proceedings in the cause, and being of opinion that the said bridges are liable to taxation, it is thereupon ordered, that the assessment of taxes upon the same be, and the same is hereby, in all things affirmed, with costs.

On motion of William S. Pennington, attorney of State.

I, James Wilson, clerk of the supreme court of New Jersey, do hereby certify, that the foregoing is a true transcript from the files and records of said court, of the judgment and proceedings in the above cause.

Witness my hand and the seal of said court, at Trenton, this first day of June, A. D. eighteen hundred and forty-eight.

[L. S.]

J. WILSON, *Clerk.*

Endorsement.

Court of errors, New Jersey, writ of error.

THE PROPRIETORS OF THE BRIDGES OVER THE RIVERS PASSAIC AND HACKENSACK
vs.
THE STATE.

A. GIFFORD, *Att'y.*

Presented in open court, and return thereto directed to be made by the clerk.

HENRY W. GREEN.

The answer of the justices of the supreme court of the State of New Jersey, within named; the record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the court of errors and appeals in a certain schedule to this writ annexed, as within commanded.

HENRY W. GREEN. [L. S.]

New Jersey court of appeals, assignment of errors.

THE PROPRIETORS OF THE BRIDGES OVER THE RIVERS PASSAIC AND HACKENSACK
vs.
THE STATE OF NEW JERSEY.

Afterwards, to wit, on the third Tuesday of July, in the year of our Lord one thousand eight hundred and forty-eight, before the judges of the court of appeals in the last resort in all causes, at Trenton, in the State of New Jersey, come the said the Proprietors of the bridges over the rivers Passaic and Hackensack, by Archer Gifford, their attorney, and say, that, in the giving of judgment for the State by the justices of the supreme court, before whom the cause was argued, there is manifest error, in this, to wit:

1st error. That the court, in rendering their judgment, have assumed that the commissioners named in the act for building bridges over the rivers Passaic and Hackensack, passed November 24, 1790, having a property of their own for the term mentioned in said act, and the right of building and owning the said bridges being vested in them; and having demised and granted the same for the entire term of ninety-nine years to the Proprietors of the bridges, that the said bridges became the absolute property of the Proprietors; whereas it would otherwise appear from the said act, and the lease or contract authorized thereby, that the entire property in the said bridges was not at any time transferred for the State.

2d error. That the court, in saying that the right [of] taxation is an inherent attribute of sovereignty, and that all the property of every citizen is prima facie liable to this charge, have applied a conceded principle to facts that do not admit of such application, inasmuch as by the assessment in this case a tax is imposed upon the building, of which

is made a consideration or condition between the State and the Proprietors of the bridges, by a positive executed contract for the enjoyment (by said Proprietors) of the franchise for a limited period of years, and that no right to make any tax or imposition is reserved to the State, nor requirement made by them in said contract, other than that the said Proprietors shall deliver up the property so demised to them at the expiration of the term mentioned in said lease or contract; and no such tax or imposition can be made unless by the consent of both parties thereto as a new contract.

3d error. That the judgment of the said court in pronouncing the said instrument, between the commissioners on the part of the State and the Proprietors of the bridges, not to be a lease, is erroneous, in not giving the said instrument of writing the practical operation and effect of a lease, as between the Proprietors and the State, whatever may be its technical import.

4th error. That the judgment of the court is founded in part on the presumption that the commissioners were the owners of the causeways to which the bridges were built; whereas the same was the property of the State, it having, by virtue of said lease, a right of reversion to both causeways and bridges in a complete and finished state, at the expiration of the term for which the commissioners were authorized to demise the same.

5th error. That the judgment of the court was erroneous in not making any distinction between the said lease or instrument of writing, and any other grant of power by the State, by charter or otherwise, but in assimilating them.

6th error. That in pronouncing judgment that the said bridges should be subject to tax, the court have established the principle that the property of the State can be taxed.

7th error. That the judgment of the court is erroneous in not setting aside the said tax; the same being made in gross, without specifying the several particulars for which the tax was imposed.

8th error. That the judgment of the court was erroneous, in that it was rendered for the State, when it should have been rendered for the defendants.

A. GIFFORD,
Attorney for appellant.

Court of errors and appeals, N. J., October 31, 1849, in error, &c.

THE PROPRIETORS OF THE BRIDGES OVER THE RIVERS HACKENSACK AND PASSAIC, plffs.,
vs.
THE STATE, defendants.

This cause coming on to be heard in the presence of the counsel of the respective parties, and the court having inspected the record and proceedings, and maturely considered the same, it is ordered, adjudged, and decreed, that the judgment of the supreme court be in all things affirmed, and that the plaintiffs pay to the defendants their costs on

this writ of error to be taxed, and which are taxed at the sum of twenty-three $\frac{30}{100}$ dollars, and that the record be remitted to the Supreme Court, to be prosecuted according to law.

On motion of W. S. Pennington, attorney of defendant.

United States of America, ss., to the State of New Jersey, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the court of errors and appeals in the last resort in all causes, as if the State of New Jersey, wherein the Proprietors of the bridges over the rivers Passaic and Hackensack are plaintiffs, and the State of New Jersey is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Oliver S. Halsted, chancellor and President of the court of errors and appeals in the last resort in all cases in the State of New Jersey, this first day of February, in the year of our Lord one thousand eight hundred and fifty.

O. S. HALSTED.

STATE OF NEW JERSEY.

I, Thomas S. Allison, secretary of State of the State of New Jersey, and ex-officio clerk of the court of errors and appeals, do hereby certify, that the foregoing is a true transcript from the files and records of said court, of the judgment and proceedings in the within named cause.

In testimony whereof I have hereunto set my hand, and affixed my [L. S.] seal of office, at Trenton, this twentieth day of November, eighteen hundred and fifty-one.

THOS. S. ALLISON, *Clerk*.